



# House of Representatives

**File No. 480**

General Assembly

January Session, 2017

**(Reprint of File No. 183)**

Substitute House Bill No. 7025  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 7, 2017

## ***AN ACT AUTHORIZING DOMESTIC INSURERS TO DIVIDE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2017*) As used in this section  
2       and sections 2 to 9, inclusive, of this act:

3       (1) "Capital" means the capital stock component of statutory  
4       surplus, as defined in the National Association of Insurance  
5       Commissioners Accounting Practices and Procedures Manual, version  
6       effective January 1, 2001, and subsequent revisions;

7       (2) "Commissioner" means the Insurance Commissioner;

8       (3) "Divide" or "division" means a transaction in which a domestic  
9       insurer divides into two or more resulting insurers;

10       (4) "Dividing insurer" means a domestic insurer that approves a  
11       plan of division pursuant to section 3 of this act;

12       (5) "Entity", unless the context otherwise requires, means: (A) A  
13       business corporation; (B) a nonprofit corporation; (C) a general

14 partnership, including a limited liability partnership; (D) a limited  
15 partnership, including a limited liability limited partnership; (E) a  
16 limited liability company; (F) a business trust or statutory trust entity;  
17 (G) an unincorporated nonprofit association; (H) a cooperative; or (I)  
18 any other person who has a separate legal existence or the power to  
19 acquire an interest in real property in his or her own name other than:  
20 (i) An individual; (ii) a testamentary, inter vivos or charitable trust,  
21 with the exception of a business trust, statutory trust entity or similar  
22 trust; (iii) an association or relationship that is not a partnership solely  
23 by reason of the law of any other state or jurisdiction; (iv) a decedent's  
24 estate; or (v) a government, governmental subdivision, agency,  
25 instrumentality or a quasi-governmental instrumentality;

26 (6) "Filing entity" means an entity that is created by filing a public  
27 organic document;

28 (7) "Governance interest" means the right under the organic law or  
29 organic rules of an entity, other than as a governor, agent, assignee or  
30 proxy, to: (A) Receive or demand access to information concerning, or  
31 the books and records of, the entity; (B) vote for the election of the  
32 governors of the entity; or (C) receive notice of or vote on issues  
33 involving the internal affairs of the entity;

34 (8) "Governor", with respect to an entity, means a person: (A) By or  
35 under whose authority the powers of an entity are exercised; and (B)  
36 under whose direction the business and affairs of the entity are  
37 managed pursuant to the organic law and organic rules of the entity;

38 (9) "Interest", unless the context otherwise requires, means: (A) A  
39 governance interest in an unincorporated entity; (B) a transferable  
40 interest in an unincorporated entity; or (C) a share or membership in a  
41 corporation;

42 (10) "Interest holder" means a direct holder of an interest;

43 (11) "Liability" means a debt, obligation or any other liability arising  
44 in any manner, regardless of whether it is secured or contingent;

45       (12) "New insurer" means a domestic insurer that is created by a  
46       division occurring on or after October 1, 2017;

47       (13) "Organic law" means the section of the general statutes, if any,  
48       other than this section and sections 2 to 9, inclusive, of this act and  
49       sections 34-601 to 34-646, inclusive, of the general statutes, governing  
50       the internal affairs of an entity;

51       (14) "Organic rules" means the private organic rules and public  
52       organic document of an entity;

53       (15) "Private organic rules" means the rules, whether or not in a  
54       record, that govern the internal affairs of an entity, are binding on all  
55       of its interest holders and are not part of its public organic document,  
56       if any;

57       (16) "Property" means all property, whether real, personal or mixed,  
58       tangible or intangible, or any right or interest therein, including rights  
59       under contracts and other binding agreements;

60       (17) "Public organic document" means the public record, the filing of  
61       which creates an entity, and any amendment to or restatement of such  
62       public record;

63       (18) "Record" means information that is inscribed on a tangible  
64       medium or that is stored in an electronic or other medium and is  
65       retrievable in perceivable form;

66       (19) "Resulting insurer" means a new insurer or a dividing insurer  
67       that survives a division;

68       (20) "Shareholder" means the person in whose name shares are  
69       registered in the records of a corporation or the beneficial owner of  
70       shares to the extent of the rights granted by a nominee certificate on  
71       file with a corporation;

72       (21) "Sign" or "signature" includes any manual, facsimile, conformed  
73       or electronic signature;

74 (22) "Surplus" means total statutory surplus less capital stock,  
75 adjusted for the par value of any treasury stock, calculated in  
76 accordance with the National Association of Insurance Commissioners  
77 Accounting Practices and Procedures Manual, version effective  
78 January 1, 2001, and subsequent revisions;

79 (23) "Transfer" includes an assignment, conveyance, sale, lease,  
80 encumbrance, including a mortgage or security interest, gift or transfer  
81 by operation of law; and

82 (24) "Transferable interest" means the right under an entity's organic  
83 law to receive distributions from the entity.

84 Sec. 2. (NEW) (*Effective October 1, 2017*) (a) Any domestic insurer  
85 may, in accordance with the requirements of sections 1 to 9, inclusive,  
86 of this act, divide into two or more resulting insurers pursuant to a  
87 plan of division.

88 (b) (1) Each plan of division shall include: (A) The name of the  
89 domestic insurer seeking to divide; (B) the name of each resulting  
90 insurer that will be created by the proposed division; (C) for each new  
91 insurer that will be created by the proposed division, its: (i) Proposed  
92 public organic document, if the new insurer will be a filing entity; and  
93 (ii) proposed private organic rules; (D) the manner of allocating  
94 between or among the resulting insurers: (i) The property of the  
95 domestic insurer that will not be owned by all of the resulting insurers  
96 as tenants in common pursuant to section 6 of this act; and (ii) those  
97 policies and other liabilities of the domestic insurer to which not all of  
98 the resulting insurers will be jointly and severally liable pursuant to  
99 subdivision (3) of subsection (a) of section 7 of this act; (E) the manner  
100 of distributing interests in the new insurers to the dividing insurer or  
101 its interest holders; (F) a reasonable description of policies or other  
102 liabilities, items of capital, surplus or other property the domestic  
103 insurer proposes to allocate to a resulting insurer, including the  
104 manner by which each reinsurance contract is to be allocated; (G) all  
105 terms and conditions required by the laws of this state or the organic

106 rules of the domestic insurer; and (H) all other terms and conditions of  
107 the division.

108 (2) If the domestic insurer will survive the division, the plan of  
109 division shall include, in addition to the information required by  
110 subdivision (1) of this subsection: (A) All proposed amendments to the  
111 dividing insurer's public organic document and private organic rules,  
112 if any; (B) if the dividing insurer desires to cancel some, but less than  
113 all, interests in the dividing insurer, the manner in which it will cancel  
114 such interests; and (C) if the dividing insurer desires to convert some,  
115 but less than all, interests in the dividing insurer into interests,  
116 securities, obligations, money, other property, rights to acquire  
117 interests or securities, or any combination thereof, a statement  
118 disclosing the manner in which it will convert such interests.

119 (3) If the domestic insurer will not survive the proposed division,  
120 the plan of division shall contain, in addition to the information  
121 required by subdivision (1) of this subsection, the manner in which the  
122 dividing insurer will cancel or convert interests in the dividing insurer  
123 into interests, securities, obligations, money, other property, rights to  
124 acquire interests or securities, or any combination thereof.

125 (c) Terms of a plan of division may be made dependent on facts  
126 objectively ascertainable outside the plan in accordance with  
127 subsection (l) of section 33-608 of the general statutes, as amended by  
128 this act.

129 (d) A dividing insurer may amend a plan of division in accordance  
130 with any procedures set forth in the plan or, if no such procedures are  
131 set forth in the plan, in any manner determined by the governors of the  
132 dividing insurer, except that an interest holder that was entitled to vote  
133 on or consent to approval of the plan of division is entitled to vote on  
134 or consent to any amendment of the plan that will change: (1) The  
135 amount or kind of interests, securities, obligations, money, other  
136 property, rights to acquire interests or securities, or any combination  
137 thereof, to be received by any of the interest holders of the dividing

138 insurer under the plan; (2) the public organic document, if any, or  
139 private organic rules of any resulting insurer that will be in effect  
140 when the division becomes effective, except for changes that do not  
141 require approval of the interest holders of the resulting insurer under  
142 its organic law or organic rules; or (3) any other terms or conditions of  
143 the plan, if the change would adversely affect the interest holders in  
144 any material respect.

145 (e) (1) A dividing insurer may abandon a plan of division after it has  
146 approved the plan without any action by the interest holders and in  
147 accordance with any procedures set forth in the plan or, if no such  
148 procedures are set forth in the plan, in a manner determined by the  
149 governors of the dividing insurer.

150 (2) A dividing insurer may abandon a plan of division after it has  
151 delivered a certificate of division to the Secretary of the State by  
152 delivering to the Secretary of the State a certificate of abandonment  
153 signed by the dividing insurer. The certificate of abandonment shall be  
154 effective on the date it is filed with the Secretary of the State, and the  
155 dividing insurer shall be deemed to have abandoned its plan of  
156 division on such date.

157 (3) A dividing insurer may not abandon its plan of division once the  
158 division becomes effective.

159 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) Except as provided in  
160 subsection (b) or (c) of this section, a domestic insurer shall not file a  
161 plan of division with the commissioner unless such plan has been  
162 approved in accordance with: (1) All provisions of its organic rules; or  
163 (2) if its organic rules do not provide for approval of a division, all  
164 provisions of its organic law and organic rules that provide for  
165 approval of a merger.

166 (b) Interest holder approval of a plan of division is not required  
167 unless: (1) The organic rules of the domestic insurer require such  
168 approval; (2) the plan makes an amendment to the organic rules  
169 requiring such approval; or (3) either: (A) The domestic insurer will

170 not survive the proposed division and all interests and other securities  
171 and obligations, if any, of the new insurers will be owned solely by the  
172 dividing insurer; or (B) the domestic insurer has only one class of  
173 interests outstanding and the interests and other securities and  
174 obligations, if any, of each new insurer will not be distributed pro rata  
175 to the interest holders.

176 (c) (1) If any provision of the organic rules of a domestic insurer  
177 adopted before October 1, 2017, requires that a specific number or  
178 percentage of governors or interest holders approve the proposal or  
179 adoption of a plan of merger, or imposes other special procedures for  
180 the proposal or adoption of a plan of merger, such insurer shall adhere  
181 to such provision in proposing or adopting a plan of division.

182 (2) If a provision of any debt security, note or similar evidence of  
183 indebtedness for money borrowed, whether secured or unsecured,  
184 indenture or other contract relating to indebtedness, or a provision of  
185 any other type of contract other than an insurance policy, annuity or  
186 reinsurance agreement, that was issued, incurred or executed by the  
187 domestic insurer before October 1, 2017, requires the consent of the  
188 obligee to a merger of the insurer or treats such a merger as a default,  
189 that provision applies to a division of the insurer as if such division  
190 were a merger.

191 (3) If any provision described in subdivision (1) or (2) of this  
192 subsection is amended on or after October 1, 2017, such provision shall  
193 thereafter apply to a division only in accordance with its express  
194 terms.

195 Sec. 4. (NEW) (*Effective October 1, 2017*) (a) A division shall not  
196 become effective until it is approved by the commissioner after  
197 reasonable notice and a public hearing, if such notice and hearing are  
198 deemed by the commissioner to be in the public interest. Except as set  
199 forth in this section, any hearing conducted under this section shall be  
200 conducted in accordance with chapter 54 of the general statutes.

201 (b) (1) The commissioner shall approve a plan of division unless the

202 commissioner finds that: (A) The interest of any policyholder or  
203 interest holder will not be adequately protected; or (B) the proposed  
204 division constitutes a fraudulent transfer under sections 52-552a to 52-  
205 552l, inclusive, of the general statutes.

206 (2) With respect to the dividing insurer, the commissioner shall: (A)  
207 Apply sections 52-552a to 52-552l, inclusive, of the general statutes to  
208 the dividing insurer only in its capacity as a resulting insurer if the  
209 dividing insurer will survive the proposed division; and (B) not apply  
210 sections 52-552a to 52-552l, inclusive, of the general statutes to the  
211 dividing insurer if the dividing insurer will not survive the proposed  
212 division.

213 (3) With respect to each resulting insurer, the commissioner shall, in  
214 applying sections 52-552a to 52-552l, inclusive, of the general statutes,  
215 treat: (A) The resulting insurer as a debtor; (B) liabilities allocated to  
216 the resulting insurer as obligations incurred by a debtor; (C) the  
217 resulting insurer as not having received a reasonably equivalent value  
218 in exchange for incurring such obligations; and (D) property allocated  
219 to the resulting insurer as remaining property.

220 (c) Except for a plan of division and any materials incorporated by  
221 reference into or otherwise made a part of such plan, all information,  
222 documents, materials and copies thereof submitted to, obtained by or  
223 disclosed to the commissioner in connection with proceedings under  
224 this section shall be confidential and shall not be available for public  
225 inspection.

226 (d) All expenses incurred by the commissioner in connection with  
227 proceedings under this section, including expenses for the services of  
228 any attorneys, actuaries, accountants and other experts not otherwise a  
229 part of the commissioner's staff as may be reasonably necessary to  
230 assist the commissioner in reviewing the proposed division, shall be  
231 paid by the dividing insurer filing the plan of division. A dividing  
232 insurer may allocate expenses described in this subsection in a plan of  
233 division in the same manner as any other liability.



234 (e) If the commissioner approves a plan of division, the  
235 commissioner shall issue a certificate of approval to the dividing  
236 insurer on a form prescribed by the commissioner.

237 (f) The commissioner shall not approve a plan of division unless the  
238 commissioner issues to each new insurer that will be created by the  
239 proposed division a license to transact insurance business in this state  
240 pursuant to section 38a-41 of the general statutes. The commissioner  
241 may waive application of this subsection to a new insurer that will not  
242 survive a merger under subsection (d) of section 38a-153 of the general  
243 statutes, as amended by this act.

244 Sec. 5. (NEW) (*Effective October 1, 2017*) (a) After a plan of division  
245 has been adopted and approved under sections 1 to 4, inclusive, of this  
246 act, an officer or duly authorized representative of the dividing insurer  
247 shall sign a certificate of division.

248 (b) The certificate of division shall set forth: (1) The name of the  
249 dividing insurer; (2) a statement disclosing whether the dividing  
250 insurer will survive the division; (3) the name of each new insurer that  
251 will be created by the division; (4) the date on which the division is to  
252 be effective, which shall not be more than ninety days after the  
253 dividing insurer has filed the certificate of division with the Secretary  
254 of the State; (5) a statement that the division was approved by the  
255 dividing insurer in accordance with section 3 of this act; (6) a statement  
256 that the division was approved by the commissioner in accordance  
257 with section 4 of this act; (7) a statement that the dividing insurer  
258 provided, not later than ten business days after the dividing insurer  
259 filed the plan of division with the commissioner, reasonable notice to  
260 each reinsurer that is party to a reinsurance contract allocated in the  
261 plan of division; (8) if the dividing insurer is a filing entity and will  
262 survive the division, any amendment to its public organic document  
263 approved as part of the plan of division; (9) for each new insurer  
264 created by the division that is a filing entity, its public organic  
265 document, provided the public organic document need not state the  
266 name or address of an incorporator of a corporation, organizer of a

267 limited liability company or similar person with respect to any other  
268 type of entity; (10) if a new insurer is a domestic limited liability  
269 partnership, its certificate of limited liability partnership; and (11) a  
270 reasonable description of the capital, surplus, other property and  
271 policies and other liabilities of the dividing insurer that are to be  
272 allocated to each resulting insurer.

273 (c) The public organic document, if any, of each new insurer must  
274 satisfy the requirements of the laws of this state, provided such  
275 document need not be signed or include any provision that need not  
276 be included in a restatement of such document.

277 (d) A certificate of division is effective when filed with the Secretary  
278 of the State or on such other date specified in the plan of division,  
279 whichever is later, provided a certificate of division shall become  
280 effective not more than ninety days after it is filed with the Secretary of  
281 the State. A division is effective when the relevant certificate of  
282 division is effective.

283 Sec. 6. (NEW) (*Effective October 1, 2017*) (a) When a division becomes  
284 effective pursuant to subsection (d) of section 5 of this act: (1) If the  
285 dividing insurer has survived the division: (A) It continues to exist; (B)  
286 its public organic document, if any, shall be amended as provided in  
287 the certificate of division; and (C) its private organic rules, if any, shall  
288 be amended as provided in the plan of division; (2) if the dividing  
289 insurer has not survived the division, its separate existence ceases to  
290 exist; (3) each new insurer: (A) Comes into existence; (B) shall hold any  
291 capital, surplus and other property allocated to it as a successor to the  
292 dividing insurer, and not by transfer, whether directly or indirectly;  
293 (C) its public organic document, if any, and private organic rules, if  
294 any, shall be effective; and (D) if it is a limited liability partnership, its  
295 certificate of limited liability partnership shall be effective; (4) capital,  
296 surplus and other property of the dividing insurer: (A) That is  
297 allocated by the plan of division either: (i) Vests in the new insurers as  
298 provided in the plan of division; or (ii) remains vested in the dividing  
299 insurer; (B) that is not allocated by the plan of division: (i) Remains

300 vested in the dividing insurer, if the dividing insurer survives the  
301 division; or (ii) is allocated to and vests equally in the resulting  
302 insurers as tenants in common, if the dividing insurer does not survive  
303 the division; or (C) vests as provided in this subsection without  
304 transfer, reversion or impairment; (5) a resulting insurer to which a  
305 cause of action is allocated as provided in subdivision (4) of this  
306 subsection may be substituted or added in any pending action or  
307 proceeding to which the dividing insurer is a party when the division  
308 becomes effective; (6) the policies and other liabilities of the dividing  
309 insurer are allocated between or among the resulting insurers as  
310 provided in section 7 of this act and the resulting insurers to which  
311 policies or other liabilities are allocated are liable for those policies and  
312 other liabilities as successors to the dividing insurer, and not by  
313 transfer, whether directly or indirectly; and (7) the interests in the  
314 dividing insurer that are to be converted or canceled in the division are  
315 converted or canceled, and the interest holders of those interests are  
316 entitled only to the rights provided to them under the plan of division  
317 and any appraisal rights they may have pursuant to section 8 of this  
318 act.

319 (b) Except as provided in the organic law or organic rules of the  
320 dividing insurer, the division does not give rise to any rights that an  
321 interest holder, governor or third party would have upon a  
322 dissolution, liquidation or winding up of the dividing insurer.

323 (c) The allocation to a new insurer of capital, surplus or other  
324 property that is collateral covered by an effective financing statement  
325 shall not be effective until a new financing statement naming the new  
326 insurer as a debtor is effective under sections 42a-9-101 to 42a-9-809,  
327 inclusive, of the general statutes.

328 (d) Unless otherwise provided in the plan of division, the interests  
329 in and any securities of each new insurer shall be distributed to: (1)  
330 The dividing insurer, if it survives the division; or (2) the holders of the  
331 common interest or other residuary interest of the dividing insurer that  
332 do not assert appraisal rights, pro rata, if the dividing insurer does not

333 survive the division.

334       Sec. 7. (NEW) (*Effective October 1, 2017*) (a) Except as provided in this  
335 section, when a division becomes effective, a resulting insurer is  
336 responsible: (1) Individually for the policies and other liabilities the  
337 resulting insurer issues, undertakes or incurs in its own name after the  
338 division; (2) individually for the policies and other liabilities of the  
339 dividing insurer that are allocated to or remain the liability of that  
340 resulting insurer to the extent specified in the plan of division; and (3)  
341 jointly and severally with the other resulting insurers for the policies  
342 and other liabilities of the dividing insurer that are not allocated by the  
343 plan of division.

344       (b) If a division breaches an obligation of the dividing insurer, all of  
345 the resulting insurers are liable, jointly and severally, for the breach,  
346 but the validity and effectiveness of the division shall not be affected  
347 by the breach.

348       (c) A direct or indirect allocation of capital, surplus, property, or  
349 policies or other liabilities in a division is not a distribution for  
350 purposes of the organic law of the dividing insurer or any of the  
351 resulting insurers.

352       (d) Liens, security interests and other charges on the capital, surplus  
353 or other property of the dividing insurer are not impaired by the  
354 division, notwithstanding any otherwise enforceable allocation of  
355 policies or other liabilities of the dividing insurer.

356       (e) If the dividing insurer is bound by a security agreement  
357 governed by Article 9 of title 42a of the general statutes, or Article 9 of  
358 the Uniform Commercial Code as enacted in any other jurisdiction,  
359 and the security agreement provides that the security interest attaches  
360 to after-acquired collateral, each resulting insurer is bound by the  
361 security agreement.

362       (f) Except as provided in the plan of division and specifically  
363 approved by the commissioner, an allocation of a policy or other

364 liability does not: (1) Affect the rights under other law of a  
365 policyholder or creditor owed payment on the policy, or payment of  
366 any other type of liability or performance of the obligation that creates  
367 the liability, except that those rights are available only against a  
368 resulting insurer responsible for the policy, liability or obligation  
369 under this section; or (2) release or reduce the obligation of a reinsurer,  
370 surety or guarantor of the policy, liability or obligation.

371 Sec. 8. (NEW) (*Effective October 1, 2017*) (a) A shareholder of a  
372 dividing insurer is entitled to appraisal rights and to obtain payment  
373 of the fair value of that shareholder's shares, pursuant to sections 33-  
374 855 to 33-868, inclusive, of the general statutes, if the dividing insurer  
375 is a business corporation.

376 (b) (1) An interest holder of a dividing insurer that is not a business  
377 corporation is entitled to contractual appraisal rights in connection  
378 with a division to the extent provided: (A) In the dividing insurer's  
379 organic rules; (B) in the plan of division; or (C) by action of its  
380 governors.

381 (2) If an interest holder is entitled to contractual appraisal rights  
382 under subdivision (1) of this subsection and the organic law of the  
383 dividing insurer does not provide procedures for the conduct of an  
384 appraisal rights proceeding, sections 33-855 to 33-868, inclusive, of the  
385 general statutes shall apply to the extent practicable or as otherwise  
386 provided in the insurer's organic rules or plan of division.

387 Sec. 9. (NEW) (*Effective October 1, 2017*) The commissioner may  
388 adopt such regulations, in accordance with chapter 54 of the general  
389 statutes, as are necessary to carry out the provisions of sections 1 to 8,  
390 inclusive, of this act.

391 Sec. 10. Section 38a-153 of the general statutes is repealed and the  
392 following is substituted in lieu thereof (*Effective October 1, 2017*):

393 (a) Any domestic insurance company may, with the prior approval  
394 of the commissioner, merge or consolidate with one or more other

395 domestic insurance companies or with one or more foreign or alien  
396 insurance companies that are either authorized to do an insurance  
397 business in this state, or are not authorized to do an insurance business  
398 in this state provided the resulting corporation is a corporation of this  
399 state and the laws of the other jurisdictions so permit. Prior to  
400 approving any such merger or consolidation, the commissioner may  
401 hold a hearing upon the fairness of the terms and conditions of the  
402 proposed merger or consolidation after such notice as, under the  
403 circumstances, the commissioner deems appropriate and shall find  
404 that the interests of the policyholders and the interests of the  
405 stockholders, if any, are protected. Such merger or consolidation may  
406 be effected either in accordance with the provisions of the general  
407 statutes relating to merger or consolidation of corporations organized  
408 under the general statutes or in accordance with any provisions in the  
409 charters of the companies merging or consolidating relating to merger  
410 or consolidation. All expenses in connection with the proceedings shall  
411 be borne by the resulting corporation.

412 (b) The domestic or foreign subsidiary of an existing domestic  
413 mutual holding company, as defined in section 38a-156, may, with the  
414 prior approval of the commissioner, merge with a foreign mutual  
415 insurer in accordance with the provisions of this section.

416 (c) In the event of any merger or consolidation that is for the  
417 purpose or has the effect of acquiring control of a domestic insurance  
418 company, the provisions of sections 38a-129 to 38a-140, inclusive, shall  
419 apply.

420 (d) The commissioner may permit the formation of a domestic  
421 insurance company that is established for the sole purpose of merging  
422 or consolidating with an existing domestic insurer simultaneously  
423 with a division authorized by section 2 of this act. Upon request of the  
424 dividing insurer, as defined in section 1 of this act, the commissioner  
425 may waive the requirements of subsections (a) to (c), inclusive, of this  
426 section and section 38a-41. Each insurer formed under this subsection  
427 shall be deemed to exist before a merger and division under this

428 section becomes effective, but solely for the purpose of being a party to  
429 such merger and division. The commissioner shall not require that  
430 such insurer be licensed to transact insurance business in this state  
431 before such merger and division. All insurance policies, annuities or  
432 reinsurance agreements allocated to such insurer shall become the  
433 obligation of the insurer that survives the merger simultaneously with  
434 the effectiveness of the merger and division. The plan of merger shall  
435 be deemed to have been approved by such insurer if the dividing  
436 insurer approved such plan. The certificate of merger shall state that it  
437 was approved by the insurer formed under this subsection.

438 Sec. 11. Subsection (a) of section 33-856 of the general statutes is  
439 repealed and the following is substituted in lieu thereof (*Effective*  
440 *October 1, 2017*):

441 (a) A shareholder is entitled to appraisal rights, and to obtain  
442 payment of the fair value of that shareholder's shares, in the event of  
443 any of the following corporate actions:

444 (1) Consummation of a merger to which the corporation is a party  
445 (A) if shareholder approval is required for the merger by section 33-  
446 817 and the shareholder is entitled to vote on the merger, except that  
447 appraisal rights shall not be available to any shareholder of the  
448 corporation with respect to shares of any class or series that remain  
449 outstanding after consummation of the merger, or (B) if the  
450 corporation is a subsidiary and the merger is governed by section 33-  
451 818;

452 (2) Consummation of a share exchange to which the corporation is a  
453 party as the corporation whose shares will be acquired, if the  
454 shareholder is entitled to vote on the exchange, except that appraisal  
455 rights shall not be available to any shareholder of the corporation with  
456 respect to any class or series of shares of the corporation that is not  
457 exchanged;

458 (3) Consummation of a disposition of assets pursuant to section 33-  
459 831 if the shareholder is entitled to vote on the disposition, except that

460 appraisal rights shall not be available to any shareholder of the  
461 corporation with respect to shares of any class or series if (A) under the  
462 terms of the corporate action approved by the shareholders there is to  
463 be distributed to shareholders in cash its net assets, in excess of a  
464 reasonable amount reserved to meet claims of the type described in  
465 sections 33-886 and 33-887, (i) within one year after the shareholders'  
466 approval of the action, and (ii) in accordance with their respective  
467 interests determined at the time of such distribution, and (B) the  
468 disposition of assets is not an interested transaction;

469 (4) An amendment of the certificate of incorporation with respect to  
470 a class or series of shares that reduces the number of shares of a class  
471 or series owned by the shareholder to a fraction of a share if the  
472 corporation has the obligation or right to repurchase the fractional  
473 share so created;

474 (5) If the corporation is not a benefit corporation, as defined in  
475 section 33-1351, (A) an amendment of the certificate of incorporation to  
476 state that the corporation is a benefit corporation; (B) consummation of  
477 a merger to which the corporation is a party in which the surviving  
478 entity will be a benefit corporation or in which shares in the  
479 corporation will be converted into a right to receive shares of a benefit  
480 corporation; or (C) consummation of a share exchange to which the  
481 corporation is a party and the shares of the corporation will be  
482 exchanged for shares of a benefit corporation; [or]

483 (6) Consummation of a division, as defined in section 1 of this act, to  
484 which the corporation is a party, provided any such appraisal is  
485 subject to the limitations of section 8 of this act; or

486 ~~[(6)]~~ (7) Any other merger, share exchange, disposition of assets or  
487 amendment to the certificate of incorporation to the extent provided by  
488 the certificate of incorporation, the bylaws or a resolution of the board  
489 of directors.

490 Sec. 12. Subsection (l) of section 33-608 of the general statutes is  
491 repealed and the following is substituted in lieu thereof (*Effective*



492     October 1, 2017):

493         (l) As used in this subsection, "filed document" means a document  
494         filed with the Secretary of the State under any provision of sections 33-  
495         600 to 33-998, inclusive, except sections 33-920 to 33-937, inclusive, and  
496         section 33-953, and "plan" means a plan of merger, [or] plan of share  
497         exchange or plan of division, as described in section 2 of this act.  
498         Whenever a provision of sections 33-600 to 33-998, inclusive, or section  
499         2 of this act permits any of the terms of a plan or filed document to be  
500         dependent on facts objectively ascertainable outside the plan or filed  
501         document, the following provisions apply:

502         (1) The manner in which the facts will operate upon the terms of the  
503         plan or filed document shall be set forth in the plan or filed document;

504         (2) The facts may include, but are not limited to (A) any of the  
505         following that is available in a nationally recognized news or  
506         information medium either in print or electronically: Statistical or  
507         market indices, market prices of any security or group of securities,  
508         interest rates, currency exchange rates, or similar economic or financial  
509         data, (B) a determination or action by any person or body, including  
510         the corporation or any other party to a plan or filed document, or (C)  
511         the terms of, or actions taken under, an agreement to which the  
512         corporation is a party, or any other agreement or document;

513         (3) The following provisions of a plan or filed document may not be  
514         made dependent on facts outside the plan or filed document: (A) The  
515         name and address of any person required in a filed document; (B) the  
516         registered office of any entity required in a filed document; (C) the  
517         registered agent of any entity required in a filed document; (D) the  
518         number of authorized shares and designation of each class or series of  
519         shares; (E) the effective date of a filed document; and (F) any required  
520         statement in a filed document of the date on which the underlying  
521         transaction was approved or the manner in which such approval was  
522         given; and

523         (4) If a provision of a filed document is made dependent on a fact

ascertainable outside of the filed document, and such fact is not ascertainable by reference to a source described in subparagraph (A) of subdivision (2) of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of the State a certificate of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Certificates of amendment under this subdivision are deemed to be authorized by the authorization of the original plan or filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Sec. 13. Subdivision (6) of section 38a-838 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(6) "Insolvent insurer" means an insurer (A) (i) licensed to transact insurance in this state at the time the policy was issued, when it assumed the obligation for the covered claim or when the insured event occurred, and (ii) against which a final order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile; (B) that is (i) the legal successor of an insurer that was licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred, by reason of a merger, provided such merger is approved by an insurance regulator having jurisdiction over such merger, and (ii) against which a final order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile; or (C) that (i) succeeds to the policy obligations of an insurer that was licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred, by reason of a division whereby policies issued by such licensed insurer are [transferred to an] allocated to or otherwise become the obligation of a successor insurer, provided such division is approved (I) in a jurisdiction that allows such division, and (II) by an insurance

558 regulator having jurisdiction over such division, and (ii) against which  
 559 a final order of liquidation with a finding of insolvency has been  
 560 entered by a court of competent jurisdiction in the succeeding insurer's  
 561 state of domicile. "Insolvent insurer" shall not be construed to mean  
 562 any insurer with respect to which an order, decree, judgment or  
 563 finding of insolvency, whether permanent or temporary in nature, or  
 564 order of rehabilitation or conservation has been issued by a court of  
 565 competent jurisdiction prior to October 1, 1971;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	New section
Sec. 5	<i>October 1, 2017</i>	New section
Sec. 6	<i>October 1, 2017</i>	New section
Sec. 7	<i>October 1, 2017</i>	New section
Sec. 8	<i>October 1, 2017</i>	New section
Sec. 9	<i>October 1, 2017</i>	New section
Sec. 10	<i>October 1, 2017</i>	38a-153
Sec. 11	<i>October 1, 2017</i>	33-856(a)
Sec. 12	<i>October 1, 2017</i>	33-608(l)
Sec. 13	<i>October 1, 2017</i>	38a-838(6)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Insurance Dept.	GF - Revenue Gain	See Below	See Below

Note: GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

This bill allows a domestic insurer to divide into two or more insurers and would result in a revenue gain for the state. It is unknown how many insurance companies would utilize this new law, but if a domestic insurer were to divide, the following fees would be imposed on the new resulting insurer(s) and would be deposited into the General Fund:

1. A \$200 annual fee for a domestic insurance company license.
2. A \$50 fee for receiving and filing annual reports.
3. A \$220 fee for filing all documents prerequisite to the issuance of a license to an insurance company.

Additionally, any expenses incurred by the Department of Insurance Commissioner in reviewing divisions will be paid by the insurers and will not result in fiscal impact to the state.

House Amendment "A" imposes additional disclosure requirements on dividing insurers and makes technical changes to the bill, resulting in no fiscal impact to the state or municipalities.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sHB 7025 (as amended by House "A")\******AN ACT AUTHORIZING DOMESTIC INSURERS TO DIVIDE.*****SUMMARY**

This bill allows a domestic insurer to divide into two or more insurers and allocate assets and obligations, including insurance policies, to the new companies (i.e., “new” or “resulting” insurers). It does so by creating a process that is legally distinct from a merger, consolidation, dissolution, or formation. Resulting insurers are deemed legal successors to the dividing insurer and any assets and obligations are allocated to them as a result of succession and not by direct or indirect transfer.

The bill requires dividing insurers to develop a plan of division, which must be approved first by the dividing insurer and then by the insurance commissioner. The bill establishes the plan’s required components, and specifies the effects of the division, including how obligations and interests are allocated. It also:

1. prohibits the commissioner from approving a plan unless each new insurer that will be created by the division is issued a license,
2. specifies how the commissioner must apply the state’s Uniform Fraudulent Transfer Act (UFTA) in assessing the division,
3. makes certain documents submitted to her for the division confidential and unavailable for public inspection, and
4. requires the dividing insurer to pay for any division-related expenses the commissioner incurs.

The commissioner may, simultaneous to approving a division, permit the formation of a domestic insurer established for the sole purpose of merging or consolidating with an existing domestic insurer.

The bill also authorizes the commissioner to adopt implementing regulations and makes conforming changes.

\*House Amendment "A" (1) requires a dividing insurer to provide reasonable notice to reinsurers that are parties to reinsurance contracts allocated by the division, (2) specifies that assets and obligations are succeeded to the resulting insurer and not allocated by a direct or indirect transfer, and (3) makes other minor changes.

EFFECTIVE DATE: October 1, 2017

## **PLAN OF DIVISION**

### ***Components (§ 2)***

Under the bill, an insurer may divide into two or more resulting insurers (i.e., a new insurer or a dividing insurer that survives a division) according to a plan of division, subject to the commissioner's approval. The plan must include:

1. the name of the domestic insurer seeking to divide and resulting insurers that the proposed division creates;
2. for each resulting insurer, the proposed "private organic rules" and, if the insurer will be a filing entity, the proposed "public organic document" (see below);
3. the allocation of (a) property that will not be commonly owned by all resulting insurers and (b) policies and other liabilities of the domestic insurer to which not all of the resulting insurers will be jointly and severally liable;
4. how interests in the new insurers will be distributed among the dividing insurer or its interest holders;
5. a reasonable description of policies, liabilities, "capital,"

“surplus,” and other “property” proposed to be allocated to resulting insurers, including how reinsurance contracts are to be allocated;

6. all terms and conditions required by state law and the dividing insurer’s “organic rules;” and
7. all other terms and conditions of the division.

Under the bill, “private organic rules” are rules, whether or not they are in a record (i.e., inscribed on a tangible medium, stored electronically, or by other means, and retrievable in perceivable form) that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of the entity’s public organic document, if any. “Public organic document” is the public record and any amendments or restatements, the filing of which creates an entity. “Capital” is the capital stock component of statutory surplus, as defined in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual. “Property” is all property, including real, personal, mixed, tangible, or intangible, and includes any right or interest to any property, including rights under contracts or binding agreements. “Surplus” is the total statutory surplus, less capital stock, adjusted for the par value of any treasury stock, calculated in accordance with the NAIC manual.

The bill requires the plan to include additional information based on whether the insurer will survive the division. If so, the plan must also include:

1. all proposed amendments, if any, to the dividing insurer’s public organic documents and private organic rules;
2. if the dividing insurer intends to cancel some, but not all, “interests” in the dividing insurer, the way it will cancel the interests; and
3. if the dividing insurer intends to convert some, but not all,



interests in the dividing insurer into any combination of interests, securities, obligations, money, other property, interest or security acquisition rights, a statement disclosing how it will convert these interests.

Under the bill, “interests” means a governance or transferable interest in an unincorporated entity or a share or membership in a corporation. A “governance interest” is the right under an entity’s organic law or rules, other than as governor, agent, assignee, or proxy, to (1) receive or demand access to entity information, including the books and records; (2) vote for the election of the entity’s governors; or (3) receive notice of or vote in the entity’s internal affairs or other issues. A “transferable interest” is the right under an entity’s organic law to receive distributions from the entity.

If the domestic insurer will not survive the division, the plan must include how the dividing insurer will cancel or convert its interests in the dividing insurer into interests, securities, obligations, money, other property, interests or securities acquisition rights, or any combination of these.

The bill allows a plan of division’s terms to be made dependent on objectively ascertainable facts outside the plan. The bill subjects the plans to certain existing requirements for corporate documents filed with the secretary of state, including what constitutes objectively ascertainable facts.

### ***Approving and Filing the Plan (§ 3)***

The bill prohibits an insurer from filing a plan of division with the commissioner unless it has been approved in accordance with the insurer’s organic rules or, if its organic rules do not provide for division approval, all organic laws and rules for approval of a merger. “Organic law” is any section of the general statutes governing the dividing insurer’s internal affairs, excluding the bill’s provisions and certain entity merger, conversion, and domestication laws, and “organic rules” are the private organic rules and public organic

document of the dividing insurer.

The bill authorizes insurers to file plans without the approval of interest holders unless:

1. the dividing insurer's organic rules require such approval;
2. the plan amends the organic rules to require it; or
3. either (a) the dividing insurer will not survive the division and all interests and other securities and obligations of the new insurer will be owned solely by the dividing insurer or (b) the domestic insurer has only one class of interests outstanding and the interests and other securities and obligations of each new insurer will not be proportionally distributed to the interest holders.

In certain circumstances, the bill requires divisions to be treated as mergers. If an insurer's organic rules adopted before October 1, 2017 require a specific number or percentage of governors or interest holders to approve a merger, or impose other special procedures for a merger proposal or adoption, the insurer must adhere to the merger provisions in proposing or adopting a plan of division.

Additionally, if the dividing insurer has any debt or obligations that (1) require the obligee's consent to a merger or (2) treat a merger as a default, these apply to the division as if it was a merger. This applies to any debt security, secured or unsecured note or similar evidence of indebtedness for money borrowed, indenture, or other contract relating to indebtedness, or provisions of any other type of contract other than an insurance policy, annuity, or reinsurance agreement issued, incurred, or executed by the domestic insurer before October 1, 2017. The bill specifies that any provisions of such debt or the dividing insurer's organic rules concerning merger approvals that are amended on or after October 1, 2017 must apply to a division only in accordance with its express terms.

**Commissioner Approval (§ 4)**

Under the bill, a division is not effective until approved by the insurance commissioner. She may first, if she deems it to be in the public interest, require reasonable notice and a public hearing. (With certain exceptions, the bill requires hearings to be conducted according to the state's Uniform Administrative Procedure Act.) Upon approving the plan, she must issue a certificate of approval to the dividing insurer.

The commissioner must approve a plan of division unless she finds the:

1. interest of any policyholder or interest holder will not be adequately protected; or
2. proposed division constitutes a fraudulent transfer under the state's Uniform Fraudulent Transfer Act (UFTA), which is designed to protect creditors (see BACKGROUND).

If the dividing insurer will survive the proposed division, the commissioner must apply UFTA to the dividing insurer only in its capacity as a resulting insurer. The bill prohibits the commissioner from applying UFTA to the dividing insurer if it will not survive the proposed division.

In applying UFTA to each resulting insurer, the commissioner must treat (1) the resulting insurer as a debtor, (2) liabilities allocated to the resulting insurer as obligations incurred by a debtor, (3) the resulting insurer as not having received a reasonably equivalent value in exchange for incurring such obligations, and (4) property allocated to the resulting insurer as remaining property.

**Confidentiality (§ 4)**

Except for a plan of division and its incorporated materials, the bill requires all information, documents, materials, and copies submitted to, obtained by, or disclosed to the commissioner in connection with a plan's approval to be confidential and not available for public

inspection.

***Expenses (§ 4)***

Dividing insurers must pay all expenses incurred by the commissioner in connection with a division, including expenses for attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to conduct the review. The bill allows a dividing insurer to allocate these expenses in a plan of division in the same manner as any other liability (e.g., assign them to one of the newly created companies).

***Licensure (§ 4)***

The bill appears to require new insurers to meet current state licensing requirements. It does so by prohibiting the commissioner from approving a plan unless she has issued licenses to the new insurers that will be created by the division. However, she may waive licensing requirements if the new insurer is a non-surviving party to a merger.

***Non-Surviving Party to a Merger (§§ 4 & 10)***

The bill establishes conditions under which the commissioner may approve the creation of a new insurer, as a party to a merger or division, that is exempt from state licensure requirements. The commissioner may, simultaneously with approving a division, permit the formation of a domestic insurer established for the sole purpose of merging or consolidating with an existing domestic insurer. An insurer formed in this way is deemed to exist before the merger and division take effect, but only to be a party to the merger and division. Any policies, annuities, or reinsurance agreements allocated to this insurer must become obligations of the surviving insurer at the same time the division and merger are effective. In such cases, the bill (1) allows the commissioner, upon request of the dividing insurer, to waive existing licensing, merger, consolidation, and other state insurance laws and (2) exempts such insurers from licensure requirements. The bill deems the plan of merger approved by the new insurer, if it was approved by the dividing insurer as part of the division.

By law, an insurance company merger is not effective until a certificate of merger is filed with the secretary of state (CGS § 38a-154). The bill requires this certificate to state that the merger was approved pursuant to these provisions.

***Certificate of Division (§ 5)***

This bill requires the commissioner to issue a certificate of approval for an approved division to the dividing insurer on a form she prescribes. Once approved, the dividing insurer's officer or duly authorized representative must sign a certificate of division, which must be delivered to the secretary of state. The certificate of division is effective when filed with the secretary or on another date that is (1) specified in the plan of division and (2) within 90 days after the filing. A division is effective when the certificate takes effect.

The certificate of division must include:

1. the name of the dividing insurer and each new insurer created by the division;
2. whether the dividing insurer will survive the division;
3. the division's effective date;
4. statements that the dividing insurer and commissioner, respectively, approved the division in accordance with the bill's provisions;
5. a reasonable description of the dividing insurer's capital, surplus, other property and policies, and other liabilities allocated to resulting insurers; and
6. a statement that the dividing insurer, within 10 days after filing the plan of division, provided reasonable notice to each reinsurer that is a party to a reinsurance contract allocated in the plan.

In certain circumstances, the certificate must include additional information. If the dividing insurer:

1. survives, the certificate must include any amendments to its public organic documents approved as part of the plan of division;
2. survives and is a filing entity (i.e., an entity created by filing a public organic document), the certificate must include each new insurer's public organic documents, excluding the name and address of an incorporator of a corporation, organizer of a limited liability company, or similar person with respect to other entities; and
3. is a domestic limited liability partnership, the certificate must include its certificate of limited liability partnership.

The new insurer's public organic document, if any, must satisfy state law. However, the bill specifies that it does not need to be signed or include any provision unnecessary for a restatement of the document.

### **AMENDING OR ABANDONING A PLAN OF DIVISION**

The bill allows an insurer, under certain circumstances, to amend or abandon a plan of division.

#### ***Amending a Plan (§ 2)***

A dividing insurer may amend a plan in accordance with the plan's procedures. Absent such procedures, a dividing insurer may amend the plan in any manner determined by the dividing insurer's governors. (The bill defines a governor as a person under whose authority an entity's powers are exercised and under whose direction the entity's business and affairs are managed.)

Under the bill, an interest holder that was entitled to vote on or consent to approval of the plan of division is entitled to do so with regard to any amendment changing:

1. the amount or kind of interests, securities, obligations, money, other property, interests or securities acquisition rights, that

interest holders receive;

2. the resulting insurer's public organic document or private organic rules that will be in effect after the division, except for changes that do not require interest holder approval under its organic law or rules; or
3. any other terms or conditions of the plan that, if changed, would adversely affect the interest holders in any material respect.

### ***Abandoning a Plan of Division (§ 2)***

A dividing insurer may abandon an approved plan of division without any action by the interest holders and in accordance with the plan's procedures, or in the absence of procedures, as determined by the dividing insurer's governors.

If the dividing insurer has already delivered a certificate of division to the secretary, it may abandon the plan by delivering to her a certificate of abandonment. The certificate of abandonment is effective once filed, upon which the dividing insurer is deemed to have abandoned the division.

The bill prohibits a dividing insurer from abandoning a plan of division once it becomes effective.

## **EFFECTS OF A DIVISION**

### ***Effects (§ 6)***

The bill establishes the effects of the division, as follows:

1. If the dividing insurer survives the division, it continues its corporate existence and its public organic document and private organic rules, if any, must be amended in accordance with the certificate of division and plan of division, respectively.
2. If the dividing insurer does not survive the division, it ceases to exist.
3. Each new insurer created by the division comes into existence

and must hold any capital, surplus and other property allocated to it as a successor to the dividing insurer, and not by direct or indirect transfer. Its public organic document and private organic rules become effective and, if it is a limited liability partnership, its partnership also becomes effective. (The bill defines “transfer” to include an assignment, conveyance, sale, lease, and encumbrance, including a mortgage or security interest, gift, or transfer by operation of law.)

4. The dividing insurer’s capital, surplus, and other property (a) vests, if it is allocated by the plan of division, in resulting insurers according to the plan or remains vested in the dividing insurer; (b) if it is not allocated by the plan, it remains vested in the dividing insurer, if the dividing insurer survives, or is allocated to, and vests equally in, the resulting insurers as tenants in common if the dividing insurer does not survive; or (c) vests in accordance with the bill’s provisions without transfer, reversion or impairment.
5. The dividing insurer’s policies and other liabilities are allocated to resulting insurers, as discussed below, as successors to the dividing insurer and not by direct or indirect transfer.
6. Interests in the dividing insurer that are converted or canceled by the division are converted or canceled, and interest holders are entitled only to the rights provided to them under the plan of division and any appraisal rights granted by the bill (see below).
7. Upon a division’s effective date, a resulting insurer to which a cause of action is allocated may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective.

### ***Insurer Responsibility (§ 7)***

When a division becomes effective, resulting insurers are responsible for:



1. individually, the policies and other liabilities the resulting insurer issues, undertakes, or incurs in its own name after the division;
2. individually, the policies and other liabilities allocated to or remaining with it by the plan of division; and
3. jointly and severally with the other resulting insurers, the dividing insurer's policies and other liabilities not allocated by the plan.

If a division breaches a dividing insurer's obligation, all of the resulting insurers are liable, jointly and severally, for the breach. However, the bill specifies that the breach does not affect the validity and effectiveness of the division.

Additionally, under the bill:

1. direct and indirect allocation of capital, surplus, property, or policies or other liabilities in a division does not constitute a distribution under the dividing or resulting insurer's organic law;
2. the dividing insurer's liens, security interests and other charges on the capital, surplus or other property are not impaired by the division, regardless of any otherwise enforceable allocation of policies or other liabilities.

### ***Collateral (§ 6)***

Under the bill, any capital, surplus, or other property allocated to a new insurer that is collateral for an existing, effective financing statement is not effective until a new financing statement, naming the new insurer as a debtor, is effective under the Uniform Commercial Code (UCC).

Resulting insurers are bound by any dividing insurer's security agreement that attaches security interest to after-acquired collateral.

This provision applies to binding security agreements governed by Article 9 of the UCC, as enacted in any jurisdiction.

***Limitations (§ 6)***

Under the bill and except as provided in the dividing insurer's organic law or rules, the division does not grant any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the dividing insurer.

The interests in, and any securities of, the new insurers must be distributed to the dividing insurer, if it survives the division. If it does not, the interests and securities of the new insurer must be distributed to the holders of common interest or other residuary interest that do not assert proportional appraisal rights. However, the plan of division may specify alternative methods of distributing these interests and securities.

Except in accordance with the plan and approved by the commissioner, an allocation of a policy or other liability does not:

1. affect the rights of a policyholder or creditor owed payment on the policy, or payment of any other type of liability or performance of the obligation that creates the liability, except that those rights are available only against a resulting insurer responsible for the policy, liability or obligation; or
2. release or reduce the obligation of a reinsurer, surety, or guarantor of the policy, liability, or obligation.

**SHAREHOLDER, STOCKHOLDER, AND INTEREST HOLDER RIGHTS*****Appraisal Rights and Fair Value (§ 8)***

Under the bill, a dividing insurer's shareholders are entitled to (1) appraisal rights and (2) if the dividing insurer is a business corporation, payment of the fair value of their shares.

If the dividing insurer is not a business corporation, an interest

holder is entitled to contractual appraisal rights to the extent provided by the dividing insurer's organic rules or plan of division, or by action of its governors. In such a case, and if the dividing insurer's organic law does not include provisions for conducting appraisal rights proceedings, the bill specifies that state appraisal rights laws apply to the extent practicable or as otherwise provided in the insurer's organic rules or plan of division.

## **BACKGROUND**

### ***UFTA***

The Uniform Fraudulent Transfer Act (CGS Sec. 52-552 et. seq.) protects creditors by, among other things, providing ways to determine and prohibit certain fraudulent transfers. It provides criteria for determining transfers that are fraudulent as to present creditors, identifies factors to consider in determining actual intent to defraud, and prohibits transfers made either with the intent to defraud or without receiving a reasonably equivalent value in exchange for the transfer under certain economic conditions.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 15 Nay 5 (03/07/2017)